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OPINION AND TEMPORARY RESTRAINING ORDER, dated October 21, 1971, in cases 71-C-330, 71-C-331, 71-C-332, and 71-C-333 (formal parts omitted).

These cases involve plaintiff tavern operators who prior to July of this year held liquor licenses duly issued by the defendant City of Kenosha pursuant to Wis. Stats. Chapter 176. This past June the defendant refused to renew these licenses. Plaintiffs allege with regard to the defendant's refusal to renew that (1) the procedure used by the city council in passing on the license applications violated the due process mandates of the Fourteenth Amendment, and (2) the reason for defendant's denials in each case was solely the nude and semi-nude dancing entertainment provided by plaintiffs in their taverns and that denials for this reason constitute infringements of plaintiffs' First Amendment rights as incorporated in the Fourteenth Amendment. Causes of action are alleged under Title 42 U.S.C. §1983, and equitable relief ordering the issuance of liguor licenses is requested. Jurisdiction of this court is sought under Title 28 U.S.C. §§1331 and 1343.

On June 30, 1971, upon the verified complaints and affidavits of plaintiffs, briefs, and representations of counsel, and after a hearing in which all parties participated, I issued a temporary restraining order in each of these actions to the effect that the "City of Kenosha shall issue forthwith upon the tender of appropriate fees, a Class 'B' Retail Fermented Malt Beverage and Intoxicating Liquor License to * * * [plaintiffs' names] and to take all necessary steps to effectuate the same, until further order of the Court." Defendant subsequently brought on a motion to vacate the temporary restraining orders or, alternatively, to modify them. In addition, answers were filed and requests for admissions of fact and replies pursuant to Rule 36 of the Federal Rules of Civil Procedure and this court's order were exchanged by the parties.

On July 26, 1971, a hearing was held on defendant's motions, and on July 30, 1971, on the basis of that hearing, the record, and briefs of counsel, I denied the motions and indicated that I would apply for the convening of a three-judge district court. The purpose of this memorandum opinion is to explain my decision of July 30, 1971, and to continue the outstanding temporary restraining orders pursuant to Title 28 U.S.C. §2284(3).

As a result of Rule 36 requests and replies in the instant cases, virtually all relevant facts have been agreed to. They are as follows.

The plaintiffs in these actions are persons engaged in the operation of taverns featuring nude and semi-nude dancing in the City of Kenosha. Each of the plaintiffs between June 1970 and June 1971 held a Class "B" liquor license duly issued by the defendant City of Kenosha pursuant to Chapter 176 of the Wisconsin Statutes. Prior to June 1971, the plaintiffs filed with defendant's clerk appropriate and timely applications for the renewal of their Class "B" licenses for the license year 1971-1972. Public hearings were held by defendant, and for the purposes of those hearings, the plaintiff-applicants for licenses were segregated from the other 154 liquor license applicants because unlike the other 154 applicants, the plaintiffs featured nude entertainment in their bars. During the public hearings, the six plaintiffs were treated as a group rather than as individuals. At these hearings, residents of Kenosha were permitted to speak on the subject of plaintiffs' license renewals. Speakers, including attorneys representing plaintiffs, spoke both for and against issuance of licenses. No speaker was allowed to be cross-examined (although plaintiffs' attorneys never made such request) or was sworn under oath, and speakers were permitted to complain about what other unnamed persons had told them.

On June 7, 1971, the city council of defendant voted to deny plaintiffs' applications for license renewals because:

"1. The licensee, through his actions in general in operating his establishment has defiled the reputation of the City of Kenosha areawise, statewise and nationally.

"2. This person helped furnish an atmosphere conducive to the flourishing of prostitution, creating a bad environment and setting improper moral standards for the children in this community.

"3. Since the inception of the type of entertainment allowed by the licensee, the law enforcement problem has increased and the Police Department records indicate that parking and litter problems around the area and crimes of a violent nature escalated in areas of our city.

"4. The Chief of Police, head of the City's Police Department, recommends denial based on the fact that topless and bottomless entertainment as featured in the licensee's establishment is conducive to the lack of respect for law and authority as it relates to our community.

"5. Increased police surveillance of establishments of this type requires more man hours and thus proves costly to the taxpayers of the city.

"6. The type of entertainment conducted by the licensee promotes the 'wide open city' effect and is not attractive to new industry who may consider coming into the community.

"7. Entertainment, which has been allowed in this establishment, attracts an undersirable element from other cities who come to view the same."

and also because:

"The licensee has operated an establihsment which has harmed the reputation of the City; has helped furnish an atmosphere conducive to the flourishing of prostitution,

crime, parking and litter problems, additional law enforcement problems costly to the taxpayers, disrespect for law and authority, discouraging the attraction of new industry, attracting undesirables into the city and creating a bad environment and setting improper moral standards for the children in this community."

On June 21, 1971, the city council voted to reconsider the denial of licenses to the plaintiffs—

"On the basis of a signed agreement by five Class 'B' Tavern Licensees that there would be (1) No more topless, bottomless dancing (2) Female entertainers shall wear bottoms and tops when on licensed premises (3) No nude male entertainers (4) The injunction presently prending in Federal Court shall be dismissed upon enactment of a new cabaret ordinance * * *."

After a public hearing—

"The meeting was then turned over to Alderman Scoville, Council President, while Mayor Burkee took the floor, stating that should the licenses in question be restored, he would veto."

The city council then voted to again deny liquor licenses to the five plaintiffs, citing for their reasons the reasons given at the June 7 meeting.

The only specification or charges by the city council officially given to the plaintiffs were given at the meetings where the charges were brought up and discussed prior to any vote being taken. During this period of time the city had no enforceable obscenity standard with regard to nude dancing entertainment in conjunction with licensing to dispense liquor, and no finding of obscenity was ever made by any court or the city council with regard to the entertainment furnished by the plaintiffs.

Finally, it is stipulated that plaintiffs each have an investment in excess of $20,000 in their tavern operations, that the business of each plaintiff survives primarily by the

sale of liquor, and that the loss of a liquor license will cause a grave loss of revenue and patronage to each plaintiff's business, depriving the plaintiffs of the ability to participate in the tavern business.

Plaintiffs assert jurisdiction of this court under Title 28 U.S.C. §1343. I find that such jurisdiction is present pursuant to Title 42 U.S.C. §1983. The City of Kenosha is a proper party defendant in a §1983 cause of action seeking only equitable relief. *Schnell v. City of Chicago,* 407 F.2d 1084, 1086 (7th Cir. 1969); *Adams v. City of Park Ridge,* 293 F.2d 585, 587 (7th Cir. 1961).

I have concluded that although neither plaintiffs nor defendants have requested in their pleadings the convening of a three-judge district court, on my own motion an application for one should be made for the reasons hereinafter stated.

Plaintiffs plead for their causes of action that the City of Kenosha in denying renewal of their liquor licenses failed to provide adequate notice of the meetings or charges to be brought, failed to require sworn testimony or allow cross-examination, allowed hearsay testimony, and denied the licenses without perceptible standards—in sum, that they were given only a legislative type hearing as opposed to an administrative or quasi-judicial type hearing. Defendant admits for the most part the factual content of this allegation but argues that the licensing procedure is proper under Wis. Stats. §§176.05(1) and (5) as interpreted by the Wisconsin Supreme Court in *State ex rel. Ruffalo v. Common Council of the City of Kenosha,* 38 Wis.2d 518, 157 N.W.2d 568 (1968).

In *Ruffalo* the City of Kenosha denied renewal of a liquor license after holding a legislative type hearing because of the location of the tavern. The plaintiff in that action argued to the Wisconsin Court that the denial was arbitrary and without

due process in that both state statutory and federal constitutional law required a quasi-judicial type hearing with the same type of rights that plaintiffs in the instant actions request. The Wisconsin Supreme Court held that there was no such right under either §§ 176.05(1) and (5) or the Constitution. In doing so it specifically rejected *Hornsby v. Allen*, 326 F. 2d 605 (5th Cir. 1964), rehearing denied 330 F. 2d 55. In effect then plaintiffs are requesting equitable relief so as to prevent the defendant from enforcing Wis. Stats. §§ 176.05(1) and (5) as construed by the Wisconsin Supreme Court. Title 28 U.S.C. § 2281 dictates that if plaintiffs' contentions are correct, then the relief they seek may only be granted by a three-judge district court.

I next conclude that the contentions of the plaintiffs are not frivolous, that the constitutional issue presented is not insubstantial, and that should a three-judge court pass on the federal constitutional questions present in these cases, plaintiffs enjoy a reasonably good chance of ultimate success in their lawsuits. There is strong authority indicating that the states, while they have wide discretion in intoxicating beverage questions, are not free from the precepts of the Fourteenth Amendment. *Wisconsin v. Constantineau*, 400 U.S. 433 (1971); *Goesaert v. Cleary*, 335 U.S. 464 (1948); *Hornsby v. Allen*, 326 F.2d 605 (5th Cir. 1964), rehearing denied 330 F.2d 55; *Glicker v. Michigan Liquor Control Commission*, 160 F.2d 96 (6th Cir. 1947); *LaRue v. California*, 326 F.Supp. 348 (C.D. Calif. 1971); *Irvis v. Scott*, 318 F.Supp. 1246 (M.D. Pa. 1970); *Seidenberg v. McSorley's Old Ale House, Inc.*, 317 F.Supp. 593 (S.D. N.Y. 1970); *Midwest Beverage Co. v. Gates*, 61 F.Supp. 688 (N.D. Ind. 1945); *Reynolds v. Louisiana Board of Alcoholic Beverage Control*, 173 So.2d 57 (La. 1965). Likewise it is doubtful that liquor licensing can escape these requirements simply because licenses might be termed privileges. *Id.*, *Goldberg v. Kelly*, 397 U.S. 254 (1969); *Shapiro*

v. Thompson, 394 U.S. 618 (1969); *Sherbert v. Verner*, 374 U.S. 398 (1963). While the sixth circuit has held that in liquor licensing matters procedural rights such as plaintiffs claim are not owing under the Constitution, *Lewis v. City of Grand Rapids*, 356 F.2d 276 (6th Cir. 1966), the fifth circuit has come to the opposite conclusion, holding that such rights are required. *Hornsby v. Allen*, supra; *Barnes v. Merritt*, 428 F.2d 284 (5th Cir. 1970). Professor Davis in his Administrative Law Treatise has praised *Hornsby* and damned *Lewis*, 1970 Supplement, § 7.19, at 363-5. *Hornsby* has been cited favorably in *Goldberg v. Kelly*, supra, at 262 n. 9; *Holmes v. New York City Housing Authority*, 398 F.2d 262, 265 (2d Cir. 1968); and *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2d Cir. 1970). In *Goldberg* it was specifically noted that *Hornsby* dealt with the "right to obtain a retail liquor store license." With regard to plaintiffs' second cause of action, the three-judge court in *LaRue v. State of California*, supra, recently held that a state cannot per se forbid nude dancing in taverns in that (1) dancing is protected by the First Amendment, (2) nude dancing is not per se obscene, and (3) the interests of the state do not require such censorship. I further find that there is a reasonably good chance that should a three-judge court convene, it will not abstain from deciding these questions on the basis of *Younger v. Harris*, 401 U.S. 37 (1971), in that none of these actions involve criminal prosecutions and no state court is enjoined. Finally, defendant contends that even should plaintiffs' contentions be correct, the relief they seek—the issuance of a license—could not be granted by a federal court. *Berry v. Allen*, 411 F.2d 1142, 1146 (6th Cir. 1969). The equity power of a federal court to fashion relief in order to preserve the constitutional rights of the people of this country has been held to be wide ranging and to extend into

matters and actions often considered the private domain of local government. E.g., *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Griffin v. School Board*, 377 U.S. 218, 232-234 (1964); *Jackson v. Oglive*, 426 F.2d 1333 (7th Cir. 1970); *Chambers v. Hendersonville City Board of Education*, 364 F.2d 189 (4th Cir. 1966); *State of Alabama v. United States*, 304 F.2d 583 (5th Cir. 1962), aff'd 371 U.S. 37; *Reynolds v. State Election Board*, 233 F.Supp. 323 (W.D. Okla. 1964); note also *State ex rel. Baroo v. Town Board*, 10 Wis. 2d 153, 160-161, 102 N.W. 2d 238 (1960). If the allegations of the plaintiffs' complaints are found to be correct by the three-judge court, I find that there is a reasonable probability that that court will fashion a suitable equitable relief.

Pursuant to Title 28 U.S.C. §2284(3), and for that purpose only, I find that on the basis of the record before me, including the affidavits and verified complaints of the plaintiffs, the representations of counsel, agreed statements of facts, and after hearings in this matter, irreparable damage will result if the outstanding temporary restraining order is not continued in each case. The plaintiffs are tavernkeepers, their livelihood and their investments are hinged upon their ability to sell liquor, and this ability in turn depends upon possessing a liquor license. Were I to fail to continue the outstanding temporary restraining orders, plaintiffs would be left without means to earn their living. Nor are these actions of such a nature that if the temporary restraining orders were not continued and plaintiffs were ultimately successful in the main action that they might then be able to calculate the damage done and sue for monetary relief. See *Minkoff v. Payne*, 210 F.2d 689 (D.C.Cir. 1963) where a temporary restraining order in a similar situation was approved.

Finally, defendant in the alternative has moved to modify the temporary restraining orders. In doing so it has offered no briefs, oral arguments, or reasons for such modification. Discretion dictates that unless sound reasons are advanced for such modification I insure the status quo until the three-judge court is convened.

IT IS THEREFORE ORDERED, pursuant to Title 28 U.S.C. §2284(3), that the temporary restraining orders presently outstanding in these actions be and they hereby are continued until further order of the court.

Dated at Milwaukee, Wisconsin, this *21st* day of October, 1971.

/s/ John W. Reynolds
U. S. District Judge

OPINION AND TEMPORARY RESTRAINING ORDER, dated October 21, 1971, in case 71-C-352 (formal parts omitted).

This is a companion case to *Bruno v. Kenosha*, C.A. No. 71-C-330, et al., decided earlier today. Procedurally and factually it is identical with those cases except that this action was commenced on July 8, 1971, and on that date this court entered an ex parte temporary restraining order.

For the reasons set out earlier today in my opinion in *Bruno v. Kenosha*, I conclude that I should request the convening of a three-judge court, and that pursuant to Title 28 U.S.C. §2284(3) the temporary restraining order presently outstanding should be continued.

On the basis of the record before me, including the affidavit and verified complaint of the plaintiff, representations of counsel, and a hearing in this matter, I find for purposes of Title 28 U.S.C. §2284(3) and for no other purpose that irreparable damage will result if the outstanding temporary restraining order is not continued.

IT IS THEREFORE ORDERED, pursuant to Title 28 U.S.C. §2284(3), that the temporary restraining order presently outstanding in this matter be and it hereby is continued until further order of the court.

Dated at Milwaukee, Wisconsin, this *21st* day of October, 1971.

/s/ John W. Reynolds
U. S. District Judge

OPINION AND TEMPORARY RESTRAINING ORDER, dated October 21, 1971, in case 71-C-334 (formal parts omitted).

This is a companion case to *Bruno v. Kenosha*, C. A. No. 71-C-330, et al., decided earlier today. Procedurally and factually it is identical with those cases except that at the June 7, 1971, meeting of the city council of Kenosha, the plaintiff was granted a license after she stated "that she no longer has or had for quite some time topless and bottomless entertainers, that she was interested in cooperating and would appreciate to be allowed to continue to be in business."

At the June 21, 1971, city council meeting, it was voted to reconsider plaintiff's license, and upon reconsideration it was voted to deny her a license.

On September 21, 1971, an amended complaint was filed in this action specifically alleging that the defendant acted pursuant to §176.05, Wis. Stats., and challenging that statute as unconstitutional. A three-judge district court is requested.

For the reasons set out earlier today in my opinion in *Bruno v. Kenosha,* I conclude that I should request the convening of a three-judge court, and that pursuant to Title 28 U.S.C. §2284(3) the temporary restraining order presently outstanding should be continued.

On the basis of the record before me, including the affidavit and verified complaint of the plaintiff, representations of counsel, and a hearing in this matter, I find for purposes of Title 28 U.S.C. §2284(3) and for no other purpose that irreparable damage will result if the outstanding temporary restraining order is not continued.

IT IS THEREFORE ORDERED, pursuant to Title 28 U.S.C. §2284(3), that the temporary restraining order presently outstanding in this matter be and it hereby is continued until further order of the court.

Dated at Milwaukee, Wisconsin, this *21st* day of October, 1971.

/s/ John W. Reynolds
U. S. District Judge

OPINION AND TEMPORARY RESTRAINING ORDER, dated October 21, 1971, in case 71-C-316 (formal parts omitted).

This is a companion case to *Bruno v. Kenosha,* C. A. No. 71-C-330, et al., decided earlier today. Procedurally it is identical with those cases. Factually, it is identical with *Robers v. Racine,* C. A.. No. 71-C-335, et al., decided earlier today except in the following aspects.

Reading all the pleadings and admissions of fact together, it appears that McCue and Misurelli are business partners in a tavern operation. In pursuance of their joint tavern operation, McCue was granted a liquor license for the year 1970-71. For reasons unknown, McCue did not apply for a liquor license for the year 1971-72, but rather his partner Misurelli so applied. Misurelli had not held a liquor license for the year 1970-71.

On September 21, 1971, an amended complaint was filed in this action alleging that the defendant acted pursuant to §176.05, Wis. Stats., challenging that statute as unconstitutional and requesting that a three-judge court be convened.

For the reasons set out earlier today in my opnion in *Bruno v. Kenosha,* I conclude that I should request the convening of a three-judge court. The fifth circuit does not appear to distinguish for due process purposes between new liquor license applications and renewals. See, e.g., *Barnes v. Merritt,* 428 F.2d 284 (5th Cir. 1970).

On the basis of the record before me, including the affidavit and verified complaint of the plaintiffs, representations of counsel, and a hearing in this matter, I find for purposes of Title 28 U.S.C. §2284(3) and for no other purpose that irreparable damage will result if the outstanding temporary restraining order is not continued.

IT IS THEREFORE ORDERED, pursuant to Title 28 U.S.C. §2284(3), that the temporary restraining order presently outstanding in this matter be and it hereby is continued until further order of the court.

Dated at Milwaukee, Wisconsin, this *21st* day of October, 1971.

/s/ John W. Reynolds
U. S. District Judge

OPINION AND TEMPORARY RESTRAINING ORDER, dated October 21, 1971, in cases 71-C-317 and 71-C-335 (formal parts omitted).

These are companion cases to *Bruno v. Kenosha,* C. A. No. 71-C-330, et al., decided earlier today. Procedurally they are identical with those cases. The parties using Rule 36 of the Federal Rules of Civil Procedure have agreed to the following facts.

The plaintiffs are the owners and operators of taverns in Racine, Wisconsin. In 1970 they were granted Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor Licenses. During that licensing year they provided entertainment in their taverns consisting of nude and semi-nude dancing. In compliance with state law, plaintiffs filed with defendant appropriate and timely applications for renewal of their liquor licenses for the license year June 1971-June 1972. On June 1, 1971, the city council of Racine, after hearings and meetings were held by the License and Welfare Committee, voted to adopt the committee's report and thereby to deny plaintiffs' renewal of their liquor licenses. The adopted committee report as is pertinent to these cases reads as follows:

"Your LICENSE & WELFARE COMMITTEE to whom was referred:

"Respectfully report

"Item 21 (6) of May 18, 1971, being Item 11 D of May 4, 1971, being the following applications for Class B Retail Fermented Malt Beverage and Intoxicating Liquor License:

"Go-Go of Racine, Inc.	201 Main Street
Richard A. Missureli	1209 Douglas Avenue
Dave H. Robers	1814 - 16th Street

"Respectfully report and recommend that after two public hearings, and based upon testimony submitted at such hearings, each of the above applicants, by reason of their method and manner of operation of their business during the license year 1970-71, have contributed substantially to the creation of the following conditions within and/or concerning the City:

"a) A change of reputation of the City of Racine from that of a 'City of Advantages' to that of a city of ill repute.

"b) An atmosphere that now attracts into the community an undersirable element which has fostered an increase of prostitution, promiscuity and VD.

"c) A sensitivity on the part of the community to the indecent activity within the premises which now discourages residents from having relatives and friends visit the City.

"d) A sensitivity on the part of residents to indecency within the premises that has adversely effected [sic] family and home life of the community and which now causes concern on the part of parents for the moral well-being of their children.

"e) An atmoshphere of fear and concern on the part of citizens for the activity that goes on in these premises and which now causes them to refrain from entering business districts where these premises are located, and in turn causing loss of patronage to other merchants in the area.

"f) That there have been complaints of feuding between the management of two of the premises (Pussy Cat and Tubby's) and threats of violence between the two; also, there exists complaints against one of the premises (Tubby's) of having patrons physically ejected when the patron failed to spend sufficient money across the bar; as well as complaints of minors in two of the premises (Tubby's and Pussy Cat).

"That, therefore, in the best interest of the welfare and morals of the community, it is recommended that these license applications be denied.

* * * * *"

It is agreed that no finding of obscenity has ever been made of any performance rendered in plaintiffs' business operations.

Plaintiffs also allege in their requests for admission of facts that at the public hearings held with regard to license renewal, no speaker was sworn under oath or allowed to be cross-examined. Defendants in reply neither admit or deny and instead object on the ground of relevancy. Plaintiffs also allege that no notice of the hearing, etc., was given them, that discussion at both committee and council meetings with regard to plaintiffs' license applications centered upon defendants' desire to eliminate nude and semi-nude dancing, and that no enforceable obscenity standard with regard to dancing in taverns has ever been established by defendants. The defendants deny each of these allegations. Finally, the parties agree that plaintiffs' businesses survive primarily by the sale of liquor, that they cannot operate without a license, and that without a license there would be a total loss of revenue and patronage. The defendants deny, on the basis of insufficient knowledge, that plaintiffs have invested more than $20,000 in their tavern operations. Plaintiffs by way of verified complaints and affidavits have sworn to the truth of all the above allegations. (In the case of *Robers v. Racine,* a complete stipulation of facts has now been entered into between the parties. This stipulation is substantially in accord with the above.)

For the reasons set out earlier today in my opinion in *Bruno v. Kenosha,* C.A. No. 71-C-330, et al., I conclude

that I should request the convening of a three-judge court, and that pursuant to Title 28 U.S.C. §2284(3) the temporary restraining orders presently outstanding should be continued. (In the case of *Robers v. Racine,* an amended complaint was filed on September 21, 1971, alleging that the defendant acted pursuant to §176.05, Wis. Stats., and challenging that statute as unconstitutional. A three-judge court is requested.)

On the basis of the record before me, including affidavits and the verified complaints of the plaintiffs, representations of counsel, and after hearings in these matters, I find for purposes of Title 28 U.S.C. §2284(3) and for no other purpose that irreparable damage will result if the outstanding temporary restraining orders are not continued in each case.

IT IS THEREFORE ORDERED, pursuant to Title 28 U.S.C. §2284(3), that the teimporary restraining orders presently outstanding in these cases be and they hereby are continued until further order of the court.

Dated at Milwaukee, Wisconsin, this *21st* day of October, 1971.

/s/ John W. Reynolds
U. S. District Judge

DECISION AND ORDER, dated August 2, 1972, in cases 71-C-316, 71-C-317, and 71-C-335 (formal parts omitted).

Before FAIRCHILD, Circuit Judge, and REYNOLDS and GORDON, District Judges.

REYNOLDS, District Judge. In these §1983 actions, the plaintiff tavern owners challenge the defendant City of Racine's denial of their applications for renewal of their Class "B" Fermented Malt Beverage and Intoxicating Liquor Licenses on the ground that they were not given a fair hearing.

More specifically, they allege that the City of Racine ("Racine"), acting in accordance with state law, has violated their civil rights, both in the manner of and the basis for the denial of a renewal license in that the licenses were (1) denied without an adversary-type hearing, and (2) denied because of the nude dancing entertainment provided in the taverns. The complaint challenges Wis. Stats. §§176.05(1) and (8) as unconstitutional, and injunctive relief is requested. This court has jurisdiction pursuant to Title 28 U.S.C. §1343.[1]

In accordance with Title 28 U.S.C. §2281,[2] a three-judge court has been convened. The governor and attorney general of Wisconsin were notified of the pendency of these actions, and the attorney general intervened as a defendant. The parties have stipulated to the facts and each has moved for summary judgment. We find for the plaintiffs.

Sections 176.05(1)[3] and 176.05(8)[4] of the Wisconsin Statutes, as construed by the Wisconsin Supreme Court,[5] enable Wisconsin municipalities to deny liquor license applications after providing the applicant with only a legislative-type hearing "wherein one is given notice of the hearing and a fair opportunity to state his position * * *."[6] Specifically, this hearing need not necessarily include "the right to cross-examine or require testimony to be given under oath."[7]

Racine, acting upon the plaintiffs' applications for renewal[8] of their liquor licenses, held a public hearing before the city council licensing committee, in which all citizens were allowed to make statements. Citizens expressing their views were neither put under oath nor subject to cross-examination by the license applicants. A verbatim transcript of the hearing was not made. The plaintiffs appeared at the hearing and made statements.

Subsequent to these hearings, the license committee met and voted to recommend denial of plaintiffs' renewal license applications because of both the nude dancing entertainment provided by the applicants in their taverns and because of the negative effects this form of entertainment allegedly had on the community. The city council, upon receipt of their license committee's rerommendations and the reasons for those recommendations, voted to deny plaintiffs' applications for renewal of their Class "B" Fermented Malt Beverage and Intoxicating Liquor Licenses.

It is agreed that Racine's renewal licensing procedure is in accordance with Wis. Stats. §§176.05(1) and (8), and that unless plaintiffs possess the liquor license denied them, they will be unable to continue operation of their taverns, taverns in which they each have a substantial investment.

Reaching the merits of this controversy,[9] we find that when Racine failed to provide plaintiffs with (1) notice of the charges upon which denial of their liquor licenses was urged, (2) an opportunity to respond to those charges, (3) an opportunity to present witnesses under oath, (4) an opportunity to confront and cross-examine opposing witnesses under oath, and (5) the opportunity to have a verbatim transcript made at their own initiative and expense, it failed to provide plaintiffs with a hearing commensurate with Fourteenth Amendment due process. We further find that §§176.05(1) and (8) of the Wisconsin Statutes, as construed by the Wisconsin Supreme Court, are unconstitutional insofar as they expressly authorize a hearing not meeting minimal due process demands.[10]

The due process clause of the Fourteenth Amendment is one of subtle shading, embodying differing rules of fair play for differing types of proceedings.[11] In any given case the answer to whether the constitution requires a hearing or

a specific type of hearing depends not upon what labels might be attached to the matter in dispute[12] but rather depends upon a balancing of the citizen's stake in the matter vis-a-vis the Government's need for abbreviated decision making.[13] In the case at hand such a balancing, even when divorced from analogous precedent, leaves room for but one conclusion.

The stake of the plaintiffs is both their occupations and their investments for denial of the renewal of a liquor license bars them not only from selling liquor but substantially impairs the value of their taverns. They seek a hearing in which they are provided with a meaningful opportunity to disprove damaging charges and demonstrate that they are deserving of being licensed to continue in their chosen businesses.

There is no dispute that Racine's (and Wisconsin's) interest in being able to deny liquor licenses in general is substantial. However, its interest in being able to deny the renewal of licenses with no other safeguard than a legislative hearing is at best minimal. While defendants have chosen to remain largely silent on this issue, we can surmise but two arguable factors suggesting the foregoing of an adversary-type hearing—cost and inconvenience.[14] Both, however, are of questionable application. There would seem little reason, for instance, why increased expenses inherent in a more formal type hearing might not at least be partially recouped by taxing "costs" to the losing party, as is the practice in litigation before a court.[15] If a legislative hearing may be more convenient, certainly the adversary hearing of the type we hold as required today better serves the state and city's interest in ascertaining the truth. None of the rights set forth in our opinion today preclude the gathering of

information; rather the rights set forth act to better insure that Racine will have the entire picture before it when it acts.[16]

The Supreme Court has on several occasions held that a hearing in keeping with due process is required when the state denies an occupational license.[17] The fact that the cases before the Supreme Court might have touched areas of special local concern has not deterred this constitutional mandate.[18] We find two cases in particular, one affirmed and the other cited with approval by the Supreme Court, to be most compelling. In *Constantineau v. Grager*, 302 F.Supp. 861, 865 (E.D. Wis. 1969), this court held that before an individual might be denied the right to purchase liquor he was entitled "to an opportunity to confront the person claiming that his conduct warrants his being 'posted' and to present his side of the story before he is in fact 'posted.' " This holding was affirmed by the Supreme Court. *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

In *Hornsby v. Allen*, 326 F.2d 605, 608 (5th Cir. 1964), the Fifth Circuit held that before a city may deny a license to sell liquor "the parties must generally be allowed an opportunity to know the claims of the opposing party, [citations omitted], to present evidence to support their contentions, [citations omitted], and to cross-examine witnesses for the other side, [citation omitted]." The Supreme Court cited *Hornsby*, specifically noting that it dealt with liquor licensing, in support of its holding that due process requires a hearing in public assistance cases. *Goldberg v. Kelly*, 397 U.S. 254, 262 n. 9 (1969).

We find in balancing the interests involved in the cases before us that the due process clause of the Fourteenth Amendment requires in the instant setting a hearing "granted at a meaningful time and in a meaningful manner."[19] We

further find that the legislative hearing permitted by state statute and granted by Racine fails to qualify as "meaningful" within the context of the cases before us.

First: When the reasons for the denial of a renewal of a license are based upon the testimony or reports of individuals,[20] the applicant must be given an opportunity[21] to present witnesses and confront and cross-examine his accusers. "Anonymous informations" are as repugnant to Americans today as they were to Roman emperors[22] and frontier lawmen.[23] The Supreme Court has increasingly "emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood."[24]

Second: Prior to a renewal license hearing, the applicant must be given timely notice of the reasons urged for denial. Given the wide ranging reasons that may constitute an adequate basis for denial of the renewal of a liquor license in Wisconsin as well as the fact that even if denial might be legally justified the licensing authority usually has the discretion to grant it if circumstances warrant such action, an applicant can present a meaningful defense only if he knows the basis upon which denial is urged. This notice must be timed so as to allow the applicant an adequate opportunity to investigate the charges, gather witnesses, and otherwise prepare a defense. Mere notice of a hearing date or notice of charges only an instant before the hearing fail to satisfy due process.

Third: Due process requires that the applicant for renewal of a liquor license have the opportunity to have the witnesses testify under oath and have a verbatim transcript of testimony made at his own initiative and expense. An applicant has a right to be safeguarded from license denial by deceit. Testimony under oath acts to insure truthful testimony, and a verbatim transcript acts to insure against arbitrary denials.

Defendants argue that state court remedies available under Wisconsin law subsequent to the denial of a liquor license provide the necessary constitutional safeguards. While the minimal procedural requirements of due process may be met in innumerable ways, present Wisconsin post-denial remedies do not suffice. It is, as the Fifth Circuit recently stated, "a hearing within the administrative framework to which" the license applicant is entitled. *Glover v. Housing Authority*, 444 F.2d 158, 162 (5th Cir. 1971). The requirement of a "meaningful" hearing is not met when one is faced "with the task of overcoming an adverse decree entered by one judge, based upon a finding * * * made by another judge." *Armstrong v. Manzo*, 380 U.S. 545, 551 (1965). Under Wisconsin law a denial of a liquor license renewal may be reversed in only very limited situations, i.e., only when the municipality is found to have been arbitrary, capricious, or discriminatory.[25] Further, in a renewal situation there is no guarantee that review and relief will be had before the prior year's license lapses. *Bell v. Burson*, 402 U.S. 535, 542 (1971).

Denial of a liquor license renewal, as in the cases before us, involves a greater amount of potential damages than are at issue in most civil litigations and in many criminal actions. It is not unimportant to note that were not civil rights jurisdiction proper, each of the plaintiffs herein would be able to assert the necessary $10,000 controversy requirement of Title 28 U.S.C. §1331. In light of this substantial interest on the part of each of the plaintiffs and balanced against the needs of Racine and Wisconsin for an abbreviated hearing process, we find that due process demands the minimal procedural safeguards set forth above. Insofar as Wis. Stats. §§176.05(1) and (8) allow less, they are unconstitutional.[26] Reaching the conclusions we have with regard

to the procedure employed in the denial of a renewal license herein, it is unnecessary for us to consider the additional arguments presented by plaintiffs.[27]

IT IS THEREFORE ORDERED that plaintiffs' motions for summary judgment be and they hereby are granted, and that defendants' motions for summary judgment be and they hereby are denied.

IT IS FURTHER ORDERED that §§176.05(1) and 176.05(8) of the Wisconsin Statutes, insofar as they permit renewal of liquor licenses to be denied without permitting the applicants an opportunity for an adversary-type hearing in which the applicant is given timely notice of the reasons urged for denial and an opportunity to present, confront, and cross-examine witnesses under oath with a verbatim transcript, be and they hereby are declared unconstitutional.

IT IS FURTHER ORDERED that the defendant City of Racine is enjoined from denying any application for the renewal of a liquor license as long as §§ 176.05(1) and 176.05(8) of the Wisconsin Statutes fail to require a hearing meeting the standards of due process set forth in this opinion.

IT IS FURTHER ORDERED that until such time as plaintiffs' renewal liquor license applications are acted upon in a manner commensurate with the due process clause of the Fourteenth Amendment as set forth in the opinion above, the defendant City of Racine shall grant plaintiffs Class "B" Fermented Malt Beverage and Intoxicating Liquor Licenses.

Dated at Milwaukee, Wisconsin, this *2nd* day of *August*, 1972.

/s/ Thomas E. Fairchild
Thomas E. Fairchild, Judge,
U. S. Court of Appeals for the
Seventh Circuit

/s/ John W. Reynolds
John W. Reynolds, Chief Judge,
U. S. District Court, E. D. Wisconsin

/s/ Myron L. Gordon
Myron L. Gordon, Judge,
U. S. District Court, E. D. Wisconsin

FOOTNOTES

1. The City of Racine is a proper party defendant in light of the equitable nature of this action. *Schnell v. City of Chicago*, 407 F.2d 1084, 1086 (7th Cir. 1969); *Adams v. City of Park Ridge*, 293 F.2d 585, (7th Cir. 1961).

2. "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute * * * shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges * * *."

For purposes of §2281, local officers are considered "state officers" when they enforce "a statute which 'embodies a policy of statewide concern.' " *Rorick v. Board of Commissioners*, 307 U.S. 208, 212 (1939); semble *Cleveland v. United States*, 323 U.S. 327, 332 (1945); *Turner v. Fouche*, 396 U.S. 346, 353 n. 10 (1970); *Board of Regents v. New Left Education Project*, 404 U.S. 541, 544 n. 2 (1972). Sections 176.05(1) and (8) of the Wisconsin Statutes, as construed by the Wisconsin Supreme Court in *State ex rel. Ruffalo v. Common Council*, 38 Wis. 2d 518 (1968), embody a policy of "statewide concern" in that they affirmatively permit all local governments throughout the state to deny a liquor license after only a legislative-type hearing. *Sailors v. Board of Education*, 387 U.S. 105, 107 (1967). This case then is unlike that decided in *Board of Regents v. New Left Education Project*, supra, wherein the challenged state campus regulation affected only a small percentage of the state-run colleges and universities. Nor can it be argued that since the challenged statutes set forth only minimum hearing requirements and thus allow local governments to provide additional hearing rights if they so desire, the statutes are simply ones of alternative "local options," none of which have general statewide effect. First, there is nothing before this court to suggest that there are any local governments in Wisconsin that provide other than a

legislative-type hearing. *Turner v. Fouche*, 396 U.S. 346, 353 n. 10 (1970). Second, regardless of what some local governments may do, the fact remains that it is the express policy of the challenged statutes, as construed by the Wisconsin Supreme Court, that they need grant no more than a legislative hearing. The "crux of the business [i.e., §2281] is procedural protection against an improvident state-wide doom by a federal court of a state's legislative *policy*." (Emphasis added.) *Phillips v. United States*, 312 U.S. 246, 251 (1941). When a district court may potentially cripple legislative policy by preventing certain applications or alternatives of a state statute, a three-judge court is required "even if the statute might be perfectly constitutional in some of its intended applications." *Boddie v. State of Connecticut*, 286 F.Supp. 968, 971 (D. Conn. 1968), rev'd on other grounds 401 U.S. 371 (1971); *Turner v. Fouche*, 396 U.S. 346, 353 n. 10 (1970). Finally it should also be noted that for purposes of §2281, the actions before us today, both in the nature of the challenge and in the pleadings, are virtually identical to *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), wherein the Supreme Court impliedly affirmed the convening of a three-judge court in this district by affirming on direct appeal the three-judge court's decision of law.

3. "AUTHORITY TO GRANT LICENSES. Each town board, village board and common council may grant retail licenses, under the conditions and restrictions in this chapter * * * to such persons entitled to a license under this chapter as they deem proper * * *."

4. "ANNUAL LICENSE MEETINGS. All town and village boards and common councils, or the duly authorized committees of such councils, shall meet not later than May 15 of each year * * * for the purpose of acting upon such applications for license as may be presented * * * [and shall act upon the applications] not later than June 15 * * *. * * * No application for a license which is in existence at the time of such annual license meeting shall be rejected without a statement on the clerk's minutes as to the reasons for such rejection."

5. *State ex rel. Ruffalo v. Common Council of the City of Kenosha*, 38 Wis. 2d 518 (1968).

6. Id. at 524.

7. Id. at 525.

8. In *Misurelli v. Racine*, C.A. No. 71-C-316 (E.D. Wis.), the expiring license was held by the partner of applicant. No explanation as to why the partnership decided to change the formal licenseholder is given. In substance, however, the application in *Misurelli* is undistinguishable from the applications in *Robers* and *Go-Go*. Each of the cases before us today involves a renewal situation. We express no opinion as to whether for due process purposes one may distinguish between renewal and initial license applications.

9. Defendants argue that plaintiffs have failed to exhaust their remedies and, alternatively, that we should abstain. The exhaustion argument was rejected in *King v. Smith*, 392 U.S. 309, 312 n. 12 (1968). As for abstention, these cases neither involve pending state criminal actions, *Younger v. Harris*, 401 U.S. 37 (1971), nor a complex issue of undetermined law, *Wisconsin v. Constantineau*, 400 U.S. 433 (1971). Indeed, the Wisconsin Supreme Court has passed on the very issue before us. *State ex rel. Ruffalo v. Common Council of the City of Kenosha*, 38 Wis. 2d 518 (1968).

10. Even without the gloss of the state court's opinion, these statutes would be subject to attack.

"In the present case the Wisconsin Act does not contain any provision whatsoever for notice and hearing. There is no ambiguity in the state statute. * * * The Act on its fact gives the chief of police the power to do what he did to the appellee. Hence the naked question * * * is whether that Act on its face is unconstitutional. * * *" *Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971).

11. *Hanah v. Larche*, 363 U.S. 420, 442 (1960).

12. *Goldberg v. Kelly*, 397 U.S. 254 (1969); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Sherbert v. Verner*, 374 U.S. 398 (1963); *United States v. Husband R. (Roach)*, 453 F.2d 1054, 1064 (5th Cir. 1971).

13. *Goldberg v. Kelly*, 397 U.S. 254, 263 (1969); *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1971).

It is too late in the day to argue that either the Twenty-first Amendment—

"The transportation or importation into any State * * * for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."—

or the alleged noxious character of liquor relieves states of all constitutional restraints with regard to liquor control. While cases may differ on the exact mandate of the Fourteenth Amendment, they are in agreement that that mandate attaches with regard to the state's regulation of liquor. *Wisconsin v. Constantineau*, 400 U.S. 433 (1971); *Goesaer v. Cleary*, 335 U.S. 464 (1948); *Barnes v. Merritt*, 428 F.2d 284, 288 (5th Cir. 1970); *Glicker v. Michigan Liquor Control Commission*, 160 F.2d 96 (6th Cir. 1947); *LaRue v. California*, 326 F.Supp. 348 (C.D. Cal. 1971); *Midwest Beverage Co. v. Gates*, 61 F.Supp. 688 (N.D. Ind. 1945); *Schwegmann Bros. v. Louisiana Board*, 216 La. 148, 43 So.2d 248 (1949).

14. Two interests are clearly *not* involved. *First*, the state and city's interest in control of liquor is not at issue. All that is involved is the manner in which such control is exercised. *Second*, an interest in speedy adjudication in order to close down a tavern cannot be claimed. Under Wisconsin law one cannot operate a tavern until a license is granted. Indeed, in a "revocation" situation in which the need for emergency action might be claimed, Wisconsin law provides for a hearing with the type of rights plaintiff desires. Wis. Stats. §§176.11 and 176.12.

15. The particular license at issue herein would rarely, if ever, be applied for by an indigent.

16. *Stanley v. Illinois*, — U.S. — (April 3, 1972).

17. *Bratton v. Chandler*, 260 U.S. 110 (1922) (real estate); *Goldsmith v. Board of Tax Appeals*, 270 U.S. 107 (1926) (accountant;); *Willner v. Committee on Character*, 373 U.S. 96 (1963) (attorney); cf. *Bell v. Burson*, 402 U.S. 535, 539 (1971) (driver's license) — "Once [drivers'] licenses are issued * * * their continued possession may become essential in the pursuit of a livelihood." Note also these recent lower court cases: *Wasson v. Trowbridge*, 382 F.2d 807 (2d Cir. 1967) (expulsion from Merchant Marine Academy); *Roth v. Board of Regents*, 446 F.2d 806 (7th Cir. 1971) (tenure); *Woodbury v. McKinnon*, 447 F.2d 839 (5th Cir. 1971) (staff appointment in hospital).

18. *Londoner v. Denver*, 210 U.S. 373 (1908), (property tax); *Bragg v. Weaver*, 251 U.S. 57 (1919) (condemnation); *Armstrong v. Manzo*, 380 U.S. 545 (1965); and *Stanley v. Illinois*, — U.S. — (April 3, 1972) (child custody). Note also *Hahn v. Burke*, 430 F. 2d 100 (7th Cir. 1970) (probation); and *Bearden v. South Carolina*, 443 F. 2d 1090 (5th Cir. 1971) (parole).

19. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Bell v. Burson*, 402 U.S. 535, 541 (1971).

20. Thus a license denial based upon a criminal *conviction* would not demand cross-examination. This is not to day, however, that the applicant might not put on witnesses to show the mitigating circumstances.

21. *Richardson v. Perales*, 402 U.S. 389 (1971).

22. E.g., Trajan. *Carlson v. Landon*, 342 U.S. 524, 552 n. 7 (1952).

23. E.g., Wild Bill Hickok. *Jay v. Boyd*, 351 U.S. 345, 372 (1956).

24. *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 103 (1963); *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970).

25. *State ex rel. Ruffalo v. Common Council of the City of Kenosha*, 38 Wis. 2d 518 (1968). Defendants argue that de novo review is available pursuant to Wis. Stats. § 66.054(14). However, even assuming it is in fact a true de novo proceeding, that proceeding offers review of only a Class "B" Fermented Malt Beverage License. Wis. Stats. §§ 66.054(14) and 66.054(1) (g). Review of the Class "B" Intoxicating Liquor License remains reviewable only in accordance with *Ruffalo*.

26. What we have said today should not be taken as a condemnation of legislative hearings. As a preliminary step in the licensing procedure, they may well be perfectly proper. In the instant cases, due process was not violated by holding a legislative hearing, but rather due process was violated by omitting an adversary-type hearing. What we hold then is that if legislative hearings are employed in the licensing procedure, then there must be interposed between the drawing up of the charges and the city council vote an opportunity for the applicant to respond as set forth in this opinion. *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 105 (1963); *Ewing v. Mytinger and Casselberry*, 339 U.S. 594 (1950).

Nor should our opinion today be taken to suggest that whenever by way of legislation Racine makes a general policy decision applicable to everyone in general that licenseholders, even if they are adversely affected, may demand an adversary hearing to contest the legislation. That question is not before us. The cases we have addressed ourselves to involve the Racine City Council's deciding that individual tavern operators should be denied licenses because of their conduct.

27. These arguments are: first, that the First Amendment protects nude dancing in taverns. Compare *LaRue v. California*, 326 F. Supp. 348 (C.D. Cal. 1971), probable jurisdiction noted 40 L.W. 3287 *with Paladino v. City of Omaha*, 335 F. Supp. 895 (Neb. 1972), and *Hodges v. Fitle*, 332 F. Supp. 504 (Neb. 1971). The second argument is that there was insufficient prior warning or legislative standards that nude dancing would be grounds for license denial. See *Barnes v. Merritt*, 428 F. 2d 284 (5th Cir. 1970).

DECISION AND ORDER, dated August 2, 1972, in cases 71-C-330, 71-C-331, 71-C-332, 71-C-333, 71-C-334, and 71-C-352 (formal parts omitted).

Before FAIRCHILD, Circuit Judge, and REYNOLDS and GORDON, District Judges.

REYNOLDS, District Judge. These are companion cases to *Misurelli v. City of Racine, Go-Go of Racine, Inc. v. City of Racine,* and *Robers v. City of Racine,* Civil Action Nos. 71-C-316, 71-C-317, and 71-C-335, respectively, decided earlier today.

Jurisdiction of this court is in Title 28 U.S.C. § 1343, and a three-judge court has been convened pursuant to Title 28 U.S.C. § 2281. The parties have stipulated to the facts and each has moved for summary judgment. In essentials the licensing procedure followed by the City of Kenosha in accordance with Wis. Stats. §§ 176.05(1) and (8) was substantially similar to that followed by Racine as set out in the companion cases above referred to. For the reasons set forth in the companion cases, summary judgment is granted in favor of the plaintiffs in each of the above-captioned actions.

IT IS THEREFORE ORDERED that plaintiffs' motions for summary judgment be and they hereby are granted, and that defendant's motions for summary judgment be and they hereby are denied.

IT IS FURTHER ORDERED that §§ 176.05(1) and 176.05(8) of the Wisconsin Statutes, insofar as they permit renewal of liquor licenses to be denied without permitting the applicants an opportunity for an adversary-type hearing in which the applicant is given timely notice of the reasons urged for denial and an opportunity to present, confront, and cross-examine witnesses under oath with a verbatim transcript, be and they hereby are declared unconstitutional.

IT IS FURTHER ORDERED that the defendant City of Kenosha is enjoined from denying any application for the renewal of a liquor license as long as §§ 176.05(1) and 176.05(8) of the Wisconsin Statutes fail to require a hearing meeting the standards of due process set forth in this opinion.

IT IS FURTHER ORDERED that until such time as plaintiffs' license applications are acted upon in a manner commensurate with the due process clause of the Fourteenth Amendment as set forth in the opinion above, the defendant City of Kenosha shall grant plaintiffs Class "B" Fermented Malt Beverage and Intoxicating Liquor Licenses.

Dated at Milwaukee, Wisconsin, this *2nd* day of *August*, 1972.

/s/ Thomas E. Fairchild
Thomas E. Fairchild, Judge,
U.S. Court of Appeals for
the Seventh Circuit

/s/ John W. Reynolds
John W. Reynolds, Chief Judge,
U.S. District Court,
E. D. Wisconsin

/s/ Myron L. Gordon
Myron L. Gordon, Judge,
U.S. District Court,
E. D. Wisconsin

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES (formal parts omitted)

NOTICE IF HEREBY GIVEN that the City of Kenosha, a Wisconsin municipal corporation, the City of Racine, a Wisconsin municipal corporation, and Robert W. Warren, Attorney General of the State of Wisconsin, do hereby appeal to the Supreme Court of the United States from the judgments of the three-judge court in the captioned cases entered on the 14th day of August, 1972, by the three-judge court of the United States District Court for the Eastern District of Wisconsin made up of the Honorable Thomas E. Fairchild, Judge, United States Court of Appeals for the Seventh Circuit; the Honorable John W. Reynolds, Chief Judge, United States District Court, Eastern District of Wisconsin; and the Honorable Myron L. Gordon, Judge, United States District Court, Eastern District of Wisconsin.

This appeal is taken pursuant to 28 U.S.C. §1253.

Dated this 1st day of September, 1972.

ROBERT W. WARREN
Attorney General of Wisconsin

/s/ LeRoy L. Dalton
LE ROY L. DALTON
Assistant Attorney General

/s/ Michael S. Fisher
MICHAEL S. FISHER
City Attorney, Kenosha, Wisconsin

/s/ Edward A. Krenzke
EDWARD A. KRENZKE
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